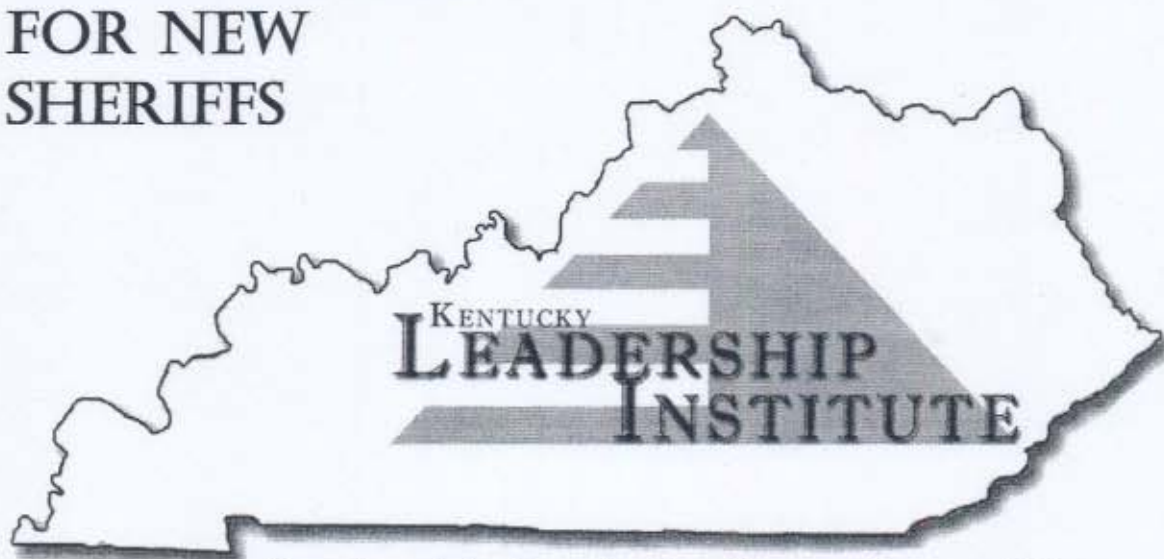


Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

**ORIENTATION
FOR NEW
SHERIFFS**



Leadership is a behavior, not a position

**LEGAL ISSUES:
DISCIPLINE; LIABILITY; &
DOMESTIC VIOLENCE**

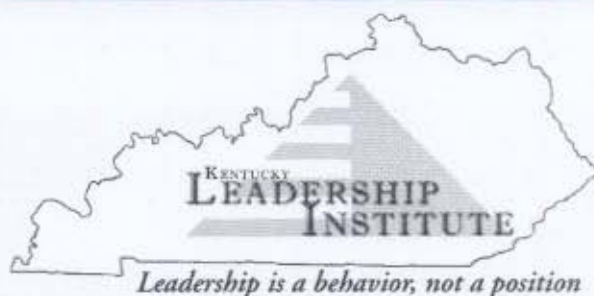


John W. Bizzack, Ph.D.
Commissioner



Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET



The Leadership Institute Branch of the Department of Criminal Justice Training offers a Web-based service to address questions concerning legal issues in law enforcement. Questions can now be sent via e-mail to the Legal Training Section at

docjt.legal@ky.gov

- ▷ Questions concerning changes in statutes, current case laws and general legal issues concerning law enforcement agencies and/or their officers will be addressed by the Legal Training Section.
- ▷ Questions concerning the Kentucky Law Enforcement Council policies and KLEFPF will be forwarded to the DOCJT General Counsel for consideration.
- ▷ Questions received will be answered in approximately two or three business days.
- ▷ Please include in the query your name, rank, agency and a daytime phone number in case the assigned attorney needs clarification on the issues to be addressed.



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NOTE:

General Information concerning the Department of Criminal Justice Training may be found at <http://docjt.ky.gov>. Agency publications may be found at <http://docjt.ky.gov/publications.asp>.

In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docjt.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

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Statutes Regarding Discipline

70.030 Deputy sheriffs -- Certified court security officers -- Nonsworn personnel -- Participation in Law Enforcement Foundation Program.

- (1) The sheriff may appoint his or her own deputies and may revoke the appointment at his or her pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a consolidated local government or city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his or her office, he or she shall take the oath required to be taken by the sheriff.
- (2) The sheriff may appoint his or her own certified court security officers and may revoke the appointment at his or her pleasure. A certified court security officer shall take an oath to faithfully perform the duties of his or her office and that he or she possesses the minimum qualifications under KRS 15.3971.
- (3) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him or her in the performance of the duties of his or her office. All nonsworn personnel shall serve at the pleasure of the sheriff.
- (4) No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member

of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.

- (5) Except for certified court security officers, a sheriff's office may, upon the written request of the sheriff, participate in the Kentucky Law Enforcement Foundation Program Fund authorized by KRS 15.410 to 15.510 without the county establishing a deputy sheriff merit board. This subsection shall not prohibit the sheriff from requesting the consolidated local government or the fiscal court to establish a deputy sheriff merit board.

70.260 Option for county to create deputy sheriff merit board -- Expenses -- Membership -- Meetings - Exclusion of certain deputy sheriffs who serve in policy-making positions.

- (1) The primary legislative body of each county may enact an ordinance creating a deputy sheriff merit board, which shall be charged with the duty of holding hearings, public and executive, in disciplinary matters concerning deputy sheriffs. For the purpose of KRS 70.260 to 70.273, the primary legislative body of each county that does not have an urban-county, consolidated local government, or charter county government shall be the fiscal court.
- (2) The reasonable and necessary expenses of the board, including the funds necessary to retain an attorney to advise the board on legal matters, shall be paid out of the fees and commissions

- collected by the sheriff. If the fees and commissions are not sufficient to pay the expenses of the board and the other expenses authorized by statute to be paid from these fees and commissions, the sheriff may negotiate with the primary legislative body to determine a method of paying all or part of the expenses of the board.
- (3) The board shall consist of five (5) members, two (2) members appointed by the county judge/executive or the chief executive officer of an urban-county government or the chief executive officer of a consolidated local government pursuant to the provisions of KRS 67C.139 with approval by the primary legislative body, two (2) members appointed by the county sheriff, and one (1) member elected by the deputy sheriffs of the county. Each board appointee shall be at least thirty (30) years of age and a resident of the county. No person shall serve on the board who is a deputy sheriff or who holds any elected public office. No person shall be appointed to the board who is a member of the immediate family of the sheriff of the county served by the board. The members of the board shall not receive a salary but shall receive reimbursement for necessary expenses.
- (4) All appointments shall be for two (2) years, and any vacancies shall be filled by the sheriff or county judge/executive, or the chief executive officer of an urban-county government or consolidated local government responsible for the appointment of the departing board member.
- (5) The board shall elect a chairman from its membership and keep an accurate record of its proceedings.
- (6) The board shall meet when a disciplinary matter concerning a deputy sheriff is brought to its attention or at other times at the discretion of the board, upon notification of its members.
- (7) Three (3) members shall constitute a quorum in all matters which may come before the board.
- (8) For the purpose of this section, "member of the immediate family" means a person's father, mother, brother, sister, spouse, son, daughter, aunt, uncle, son-in-law, or daughter-in-law.
- (9) An ordinance, adopted under subsection (1) of this section by a county or consolidated local government, may exclude deputy sheriffs who serve in policy making or confidential positions from coverage by the merit system. If the ordinance makes this exclusion, a deputy sheriff who is covered by the merit system and who accepts an appointment in a policy-making or confidential position shall be deemed to have received a leave of absence from the merit system during the incumbency of that position. If he ceases to serve in a policy-making or confidential position but continues to serve as a deputy, he shall be restored to coverage at the same classification and rank that he held prior to his policy-making position under the merit system. A deputy who is not covered by the merit system at the time he is appointed to a policy-making or confidential position shall be deemed not to be part of the merit system and shall not be

included in the merit system when he ceases to serve in that position.

70.263 Training requirements for counties having deputy sheriff merit board -- Training for deputy sheriff providing security service to the courts.

- (1) Each person serving as a covered deputy sheriff on the effective date of an ordinance that creates a deputy sheriff merit board for the county in which he serves shall have successfully completed, within one (1) year following the effective date of that ordinance, at least six hundred forty (640) hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received before the effective date of the ordinance may be used to satisfy all or part of this requirement.
- (2) Each person appointed as a covered deputy sheriff in a county that has adopted a deputy sheriff merit board before the date of his appointment shall have successfully completed, within one (1) year following the appointment, at least six hundred forty (640) hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received before the effective date of the ordinance may be used to satisfy all or part of this requirement.
- (3) A deputy sheriff whose official duty is to provide security service to the courts, and who is compensated pursuant to KRS 64.092, shall, the provisions of subsections (1) and

(2) of this section notwithstanding, satisfy the training requirements for employment if he completes law enforcement training which the Administrative Office of the Courts certifies to the sheriff as acceptable. If the training was not received prior to the effective date of the ordinance creating the deputy sheriff merit board, in the case of a deputy sheriff serving when the ordinance was passed, or prior to appointment in the case of a deputy sheriff appointed after the effective date of the ordinance, then it shall be received within one (1) year following the effective date of the ordinance or the date of appointment, as the case may be.

- (4) A person failing to meet the requirements of this section shall forfeit his position as deputy sheriff immediately upon the expiration of the applicable one (1) year time limit.

70.267 Prohibited conduct -- Construction of section -- Probationary period.

- (1) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall directly or indirectly solicit, receive, or be in any manner concerned in receiving, soliciting, or publicizing any assessment, gift, subscription, or contribution to or for any political party or candidate for public office.
- (2) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be suspended, laid off, demoted, promoted, disciplined, threatened, or in any way changed in duty or compensation for withholding or neglecting to pay or make

contributions of any sort, either in money, goods, services, or anything of value for any political purpose. Nothing in this subsection shall limit the power of a sheriff to revoke the appointment of a deputy during the probationary period described in sub-section (5) of this section.

- (3) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be a candidate for any public office. Any person who violates this subsection shall forfeit his position as deputy sheriff.
- (4) Nothing contained in this section shall be construed to abridge the rights of any deputy sheriff with respect to his personal opinions, beliefs, or right to vote.
- (5) A deputy sheriff's employment shall be probationary during the first year of service following an initial appointment or a promotional appointment. A sheriff may, at his pleasure, revoke the appointment of a deputy who works for him at any time within one (1) year following the appointment.

70.270 Disciplinary and removal procedures by sheriff -- Charges by citizen.

- (1) Any deputy sheriff may be removed, suspended, or laid off by the sheriff for any cause which will promote the efficiency of the department. Except when an appointment is revoked during the probationary period described in KRS 70.267(5), the sheriff shall furnish a covered deputy with a written statement of the reason why the action was taken.
- (2) Except for the revocation of an appointment pursuant to KRS

70.267(5), every action in the nature of a dismissal, suspension, or reduction made by the sheriff shall be subject to review by the board at the request of any deputy sheriff affected by the provisions of KRS 70.260 to 70.273.

- (3) Any citizen who makes written charges of misconduct, under oath, concerning the actions of any deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall present the charges to the sheriff, who shall investigate the charges. The sheriff shall determine what action, if any, shall be taken against the deputy, subject to the limitations set out in KRS 70.260 to 70.273. The citizen may appeal the determination of the sheriff to the board.

70.273 Disciplinary and removal procedures by board -- Hearing -- Appeals.

- (1) The board may remove, suspend, lay off or discipline any deputy sheriff covered by the provisions of KRS 70.260 to 70.273 on written charges of misconduct preferred on its own initiative or the initiative of any citizen, but only after reasonable notice to the accused and after a complete public hearing at which the deputy accused shall have the right to be present, represented by counsel, and confronted by all of the witnesses preferring charges against him.
- (2) Procedural due process shall be afforded to all deputy sheriffs by the board. The board shall notify the deputy promptly and in writing of any charges brought against him by the board or by a citizen.

The board shall have the power to issue subpoenas and to compel the attendance of witnesses, and shall conduct the hearing, as far as possible, within the Kentucky Rules of Civil Procedure. Any deputy who is not given a hearing within sixty (60) days of any charge being preferred shall be reinstated in full.

- (3) After a full public hearing by the board, the board shall retire into executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. The board in executive session shall not receive any further evidence or communication from any source, except for legal advice from the board's counsel, prior to reaching its determination and conclusion.
- (4) When an appointment is revoked during the probationary period described in KRS 70.267(5), the action of the sheriff shall be final. In all other disciplinary matters, the action of the sheriff or the board shall be final, except that any aggrieved person may, within thirty (30) days after the decision is rendered, appeal to the Circuit Court of the county in which the board meets. The board shall be named as respondent, and the county attorney shall represent the board before the court. The appeal taken to the Circuit Court shall be a review of record by the court.
- (5) The provisions of KRS 70.260 to 70.273 shall not apply to any nonsworn employee appointed by the sheriff pursuant to KRS 70.030, to any special deputy appointed by the sheriff pursuant to KRS 70.045, or to a deputy in a policy-making or confidential

position excluded from coverage by the ordinance creating the deputy sheriff merit board.

15.520 Complaints against police officers -- Manner of investigation and hearing.

- (1) In order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for police officers of the local unit of government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers covered by this section:
 - (a) Any complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken as follows:
 1. If the complaint alleges criminal activity on behalf of a police officer, the allegations may be investigated without a signed, sworn complaint of the individual;
 2. If the complaint alleges abuse of official authority or a violation of rules and regulations of the department, an affidavit, signed and sworn to by the complainant, shall be obtained;
 3. If a complaint is required to be obtained and the individual, upon request, refuses to make allegations

under oath in the form of an affidavit, signed and sworn to, the department may investigate the allegations, but shall bring charges against the police officer only if the department can independently substantiate the allegations absent the sworn statement of the complainant;

4. Nothing in this section shall preclude a department from investigating and charging an officer both criminally and administratively.

- (b) No threats, promises, or coercions shall be used at any time against any police officer while he or she is a suspect in a criminal or departmental matter. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons for the suspension;
- (c) No police officer shall be subjected to interrogation in a departmental matter involving alleged misconduct on his or her part, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The interrogation shall be conducted while the officer is on duty. The police officer may

be required to submit a written report of the alleged incident if the request is made by the department no later than the end of the subject officer's next tour of duty after the tour of duty during which the department initially was made aware of the charges;

- (d) If a police officer is under arrest, or likely to be arrested, or a suspect in any criminal investigation, he shall be afforded the same constitutional due process rights that are accorded to any civilian, including, but not limited to, the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences. Nothing in this section shall prevent the suspension with or without pay or reassignment of the police officer pending disposition of the charges;
- (e) Any charge involving violation of any local unit of government rule or regulation shall be made in writing with sufficient specificity so as to fully inform the police officer of the nature and circumstances of the alleged violation in order that he may be able to properly defend himself. The charge shall be served on the police officer in writing;
- (f) When a police officer has been charged with a violation of departmental rules or regulations, no public statements shall be made concerning the alleged violation by any person or persons of the local unit of

- government or the police officer so charged, until final disposition of the charges;
- (g) No police officer as a condition of continued employment by the local unit of government shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature; and
 - (h) When a hearing is to be conducted by any appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any police officer charged:
 - 1. The accused police officer shall have been given at least seventy-two (72) hours notice of any hearing;
 - 2. Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the police officer no less than seventy-two (72) hours prior to the time of any hearing;
 - 3. If any hearing is based upon a complaint of an individual, the individual shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested;
 - 4. If the return receipt has been returned unsigned,

or the individual does not appear, except where due to circumstances beyond his control he cannot appear, at the time and place of the hearing, any charge made by that individual shall not be considered by the hearing authority and shall be dismissed with prejudice;

5. The accused police officer shall have the right and opportunity to obtain and have counsel present, and to be represented by the counsel;

6. The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused police officer or the charging party. If any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a

rule. The Circuit Court, or any judge thereof, may on the application compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court;

7. The accused police officer shall be allowed to have presented, witnesses and any documentary evidence the police officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;

8. Any police officer suspended with or without pay who is not given a hearing as provided by this section within sixty (60) days of any charge being filed, the charge then shall be dismissed with prejudice and not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits; and

9. The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks

weight or credibility and whether the officer has been materially prejudiced.

- (2) Any police officer who shall be found guilty by any hearing authority of any charge, may bring an action in the Circuit Court in the county in which the local unit of government may be located to contest the action of that hearing authority, and the action shall be tried as an original action by the court.
- (3) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to appeal to the Court of Appeals shall be the same as in any civil action. As the provisions of this section relate to a minimum system of professional conduct, nothing herein shall be construed as limiting or in any way affecting any rights previously afforded to police officers of the Commonwealth by statute, ordinance, or working agreement.
- (4) The provisions of this section shall apply only to police officers of local units of government who receive funds pursuant to KRS 15.410 through 15.992.

Statutes Regarding Liability

70.020 General bond of sheriff -- Minimum -- Record.

- (1) The sheriff shall execute a bond for the faithful performance of the duties of his office. This bond shall be in addition to the bond required of him by KRS 134.230 and shall be a minimum of ten thousand dollars (\$10,000), with sureties approved by the fiscal court, which shall enter the approval in its minutes and shall record the bond with the county clerk. The fiscal court shall require the sheriff to renew this bond annually, and more often if it deems proper.
- (2) No jailer, coroner, judge, county clerk, clerk of a Circuit Court, or attorney shall be surety for a sheriff on his official bond.

70.040 Deputy's acts and omissions -- Liability for.

The sheriff shall be liable for the acts or omissions of his deputies; except that, the office of sheriff, and not the individual holder thereof, shall be liable under this section. When a deputy sheriff omits to act or acts in such a way as to render his principal responsible, and the latter discharges such responsibility, the deputy shall be liable to the principal for all damages and costs which are caused by the deputy's act or omission.

70.045 Special deputies.

- (1) The sheriff of a county with a population of ten thousand (10,000) or more may appoint and have sworn in and entered on the county clerk order book one (1) special deputy for each two thousand five hundred (2,500) residents or part thereof in his county, to assist him with general law enforcement and maintenance of public order. The sheriff of a county with a population of less than ten thousand (10,000) may appoint and have sworn in

and entered on the county clerk order book one (1) special deputy for each one thousand (1,000) residents or part thereof in his county, to assist him with general law enforcement and maintenance of public order. The population of the county shall be determined by the most recent count or estimate by the Federal Bureau of Census.

- (2) The sheriff in each county may appoint and have sworn in, and entered on the county clerk order book, as many special deputies as needed to assist him in the execution of his duties and office in preparation for or during an emergency situation, such as fire, flood, tornado, storm, or other such emergency situations. For purposes of this section only, an emergency situation is a condition which, in the judgment of the sheriff, requires a response immediately necessary for the preservation of public peace, health or safety, utilizing special deputies previously appointed in preparation for the contingency.
- (3) The special deputy shall:
 - (a) Be appointed and dismissed on the authority of the sheriff;
 - (b) Not receive any monetary compensation for his time or services;
 - (c) Serve at the request of the sheriff, unless personal conditions rule otherwise;
 - (d) Be answerable to and under the supervision of the sheriff, who shall be responsible for the actions of the special deputy; and
 - (e) Be appointed regardless of race, color, creed, or position.
- (4) The position of special deputy as created and defined in subsections (1), (2), and (3) is subject to the provisions of this section only.

70.050 Person may be empowered to execute process.

- (1) A sheriff may, by writing, empower any person to execute an original or mesne

process. The person so empowered shall indorse his action on the instrument empowering him, and shall make affidavit to the truth of the indorsement, and attach the affidavit to the process and deliver the indorsement and affidavit to the sheriff or his deputy, to be returned to the proper office. The indorsement shall have the same validity as if made by the sheriff.

- (2) The sheriff shall be responsible for the acts of the person so empowered.

70.280 Court security officers -- Duties -- Prohibited conduct.

- (1) A certified court security officer shall be charged with the following duties:
- (a) Attending sessions of any court of the Court of Justice in the county in which he or she is sworn;
 - (b) Keeping order in the courts;
 - (c) Providing security services to the courts within the court facility or immediate area of the court facility;
 - (d) Guarding prisoners during court appearances;
 - (e) Serving warrants and other court papers on individuals physically present in the courtroom;
 - (f) Transporting prisoners;
 - (g) Arresting and taking individuals into custody who are in the court facility or immediate area of the court facility, or while transporting prisoners; and
 - (h) Service of process and other papers relating to civil matters on individuals physically present in the courtroom.
- (2) A certified court security officer shall not:
- (a) Go outside the immediate area of the court facility in which he or she is providing security services to make an arrest or take an individual into custody, except when transporting prisoners;
 - (b) Patrol the roads, streets, or highways;

- (c) Issue traffic citations, except to enforce parking regulations around the court facility; or

- (d) Perform general law enforcement duties outside that of providing court security.

Federal Statutes on Liability

18 U.S.C. § 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;

or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-- They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by

reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Section 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

State Statutes on Liability

65.200 Definitions for KRS 65.2001 to 65.2006.

As used in KRS 65.2001 to 65.2006, unless the context otherwise requires:

- (1) "Action in tort" means any claim for money damages based upon negligence, medical malpractice, intentional tort, nuisance, products liability and strict liability, and also includes any wrongful death or survival-type action.
- (2) "Employee" means any elected or appointed officer of a local government, or any paid or unpaid employee or agent of a local government, provided that no independent contractor nor employee nor agent of an independent contractor shall be deemed to be an employee of a local government.
- (3) "Local government" means any city incorporated under the law of this Commonwealth, the offices and agencies thereof, any county government or fiscal court, any special district or special taxing district created or controlled by a local government.

65.2001 Application and construction of KRS 65.2002 to 65.2006.

- (1) Every action in tort against any local government in this Commonwealth for death, personal injury or property damages proximately caused by:
 - (a) Any defect or hazardous condition in public lands, buildings or other public property, including personality;
 - (b) Any act or omission of any employee, while acting within the scope of his employment or duties; or
 - (c) Any act or omission of a person other than an employee for which the local government is or may be liable shall be subject to the provisions of KRS 65.2002 to 65.2006.

- (2) Except as otherwise specifically provided in KRS 65.2002 to 65.2006, all enacted and case-made law, substantive or procedural, concerning actions in tort against local governments shall continue in force. No provision of KRS 65.2002 to 65.2006 shall in any way be construed to expand the existing common law concerning municipal tort liability as of July 15, 1988, nor eliminate or abrogate the defense of governmental immunity for county governments.

65.2002 Amount of damages recoverable against local governments.

The amount of damages recoverable against a local government for death, personal injury or property damages arising out of a single accident or occurrence, or sequence of accidents or occurrences, shall not exceed the total damages suffered by plaintiff, reduced by the percentage of fault including contributory fault, attributed by the trier of fact to other parties, if any.

65.2003 Claims disallowed.

Notwithstanding KRS 65.2001, a local government shall not be liable for injuries or losses resulting from:

- (1) Any claim by an employee of the local government which is covered by the Kentucky workers' compensation law;
- (2) Any claim in connection with the assessment or collection of taxes;
- (3) Any claim arising from the exercise of judicial, quasi-judicial, legislative or quasilegislative authority or others, exercise of judgment or discretion vested in the local government, which shall include by example, but not be limited to:
 - (a) The adoption or failure to adopt any ordinance, resolution, order, regulation, or rule;
 - (b) The failure to enforce any law;

- (c) The issuance, denial, suspension, revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;
- (d) The exercise of discretion when in the face of competing demands, the local government determines whether and how to utilize or apply existing resources; or
- (e) Failure to make an inspection.

Nothing contained in this subsection shall be construed to exempt a local government from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial duties.

65.2005 Defense of employee by local government -- Liability of employee.

- (1) A local government shall provide for the defense of any employee by an attorney chosen by the local government in any action in tort arising out of an act or omission occurring within the scope of his employment of which it has been given notice pursuant to subsection (2) of this section. The local government shall pay any judgment based thereon or any compromise or settlement of the action except as provided in subsection (3) of this section and except that a local government's responsibility under this section to indemnify an employee shall be subject to the limitations contained in KRS 65.2002.
- (2) Upon receiving service of a summons and complaint in any action in tort brought against him, an employee shall, within ten (10) days of receipt of service, give written notice of such action in tort to the executive authority of the local government.
- (3) A local government may refuse to pay a judgment or settlement in any action against an employee, or if a local government pays any claim or judgment against any employee pursuant to

subsection (1) of this section, it may recover from such employee the amount of such payment and the costs to defend if:

- (a) The employee acted or failed to act because of fraud, malice, or corruption;
- (b) The action was outside the actual or apparent scope of his employment;
- (c) The employee willfully failed or refused to assist the defense of the cause of action, including the failure to give notice to the executive authority of the local government pursuant to subsection (2) of this section;
- (d) The employee compromised or settled the claim without the approval of the governing body of the local government; or
- (e) The employee obtained private counsel without the consent of the local government, in which case, the local government may also refuse to pay any legal fees incurred by the employee.

EPO/DVO Statutes

403.715 Interpretation of KRS 403.715 to 403.785 by court.

KRS 403.715 to 403.785 shall be interpreted by the courts of the Commonwealth of Kentucky to effectuate the following express legislative purposes:

- (1) To allow persons who are victims of domestic violence and abuse to obtain effective, short-term protection against further violence and abuse in order that their lives will be as secure and as uninterrupted as possible;
- (2) To expand the ability of law enforcement officers to effectively respond to situations involving domestic violence and abuse so as to prevent further such incidents and to provide assistance to the victims;
- (3) To provide peace officers with the authority to immediately apprehend and charge for violation of a protective order any person whom the officer has probable cause to believe has violated an order of protection issued under KRS 403.740 or 403.750 and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- (4) To provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the incidence and causes of such violence and abuse; and
- (5) Nothing in KRS 403.715 to 403.785 shall be interpreted to repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209 or 620.

403.720 Definitions for KRS 403.715 to 403.785.

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, sexual abuse, assault, or the infliction of

fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;

- (2) "Family member" means a spouse, including a former spouse, a parent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree; and
- (3) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

403.725 Petition, who may file -- Protective orders.

- (1) Any family member or member of an unmarried couple who is a resident of this state or has fled to this state to escape domestic violence and abuse may file a verified petition in the District Court of the county in which he resides. If the petitioner has left his usual place of residence within this state in order to avoid domestic violence and abuse, the petition may be filed and proceedings held in the District Court in the county of his usual residence or in the District Court in the county of current residence. Any family member or member of an unmarried couple who files a petition for an emergency protective order in District or Circuit Court shall make known to the court any custody or divorce actions, involving both the petitioner and the respondent, that are pending in any Circuit Court in the Commonwealth. The petition shall also include the name of the court where filed.
- (2) Any family member or any member of an unmarried couple, as those terms are defined in KRS 403.720, may file for and receive protection under KRS 403.715 to 403.785, notwithstanding the existence of or intent to file an action in the Circuit Court

- by either party under the provisions of this chapter.
- (3) A petition filed pursuant to subsection (1) of this section may be filed by the family member or member of an unmarried couple seeking relief or by an adult family member or member of an unmarried couple on behalf of a minor family member.
 - (4) If a family member files an action for dissolution of marriage or child custody in Circuit Court, the Circuit Court shall have jurisdiction to issue a protective order upon the filing of a verified motion therein either at the commencement or during the pendency of the action in Circuit Court pursuant to the provisions of KRS 403.730 to 403.785.
 - (5) No Circuit or District Court shall require mediation, conciliation, or counseling prior to or as a condition of issuing an emergency protective order or domestic violence order.
 - (6) When the elected, appointed, or special judge of the district is absent from the district, otherwise unavailable, or unable to act, any Circuit Judge shall have the authority to issue an emergency protective order pursuant to KRS 403.730 to 403.785. If a Circuit Judge issues an emergency protective order, except as otherwise provided in this section, that judge shall conduct the hearing as required by KRS 403.745 and any order issued shall be enforced as provided in this chapter.
 - (7) During any hearing in Circuit Court on dissolution of marriage, child custody, or visitation, at which both parties are present or represented by counsel, the Circuit Judge shall have the authority to issue a protective order pursuant to KRS 403.750 to 403.785.
 - (8) Following the issuance of a protective order under this section, if the judge who issued the order is absent from the district, otherwise unavailable, or unable to conduct proceedings regarding the enforcement, violation, or modification of

the order within a reasonable time, the proceedings shall be conducted by any District or Circuit Judge.

403.730 Petition -- Contents -- Form -- Filing fee.

- (1) A petition filed pursuant to KRS 403.725 shall be verified and shall contain:
 - (a) The name, age, address, occupation, and residence of the petitioner;
 - (b) The name, age, address, occupation, and residence of the person or persons who have engaged in the alleged act or acts of domestic violence and abuse;
 - (c) The facts and circumstances which constituted the alleged domestic violence and abuse;
 - (d) The date and place of the marriage of the parties, if applicable; and
 - (e) The names, ages, and addresses of the parties' minor children, if applicable.
- (2) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief under KRS 403.715 to 403.785 by the circuit clerk or to another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, and county or Commonwealth's attorneys. All petitions requested, completed, and signed by persons seeking protection under the provisions of KRS 403.715 to 403.785 shall be accepted and filed.
- (3) Notwithstanding any provision of law to the contrary, no filing fee or court costs shall be assessed against the petitioner in connection with filing a petition under KRS 403.725.

403.735 Review by court -- Access to emergency protective orders -- Local protocol in domestic violence matters -- Time at which orders of protection take effect.

- (1) Upon the filing of a petition, as provided for in KRS 403.725, the court, after review of the petition and determining that domestic violence and abuse exists, without a jury, shall utilize one (1) of the alternatives provided for in KRS 403.740 or 403.745.
- (2) A court may issue mutual protective orders only if a separate petition is filed by the respondent. Pursuant to KRS 403.740 and 403.750, the court shall then provide orders, sufficiently specific to apprise any peace officer as to which party has violated the order if there is probable cause to believe a violation of the order has occurred.
- (3) (a) All courts shall provide twenty-four (24) hour access to emergency protective orders.
- (b) Each court shall submit written procedures for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.
- (c) Each court shall establish the local protocol in domestic violence matters in which there may be joint jurisdiction between District and Circuit Court. Each court shall submit the written procedures to be reviewed and approved by the Kentucky Supreme Court.
- (d) All amendments or revisions to the local procedures required pursuant to this section shall be submitted to the Kentucky Supreme Court for review and approval.
- (4) If an emergency protective order is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it.
- (5) An order of protection issued under the provisions of KRS 403.715 to 403.785 shall become effective and binding on the respondent at the time of personal service or when the respondent is given notice of

the existence and terms of the order by a peace officer or the court, whichever is earlier. After notice of the existence and terms of the order is given to the respondent, a peace officer or the court may enforce the terms of the order, and act immediately upon any violation of the order. After notice of the order, all reasonable efforts shall be made by the peace officer or the court to arrange for personal service of the order upon the respondent.

403.737 Forms for documents entered into Law Information Network of Kentucky.

All forms, affidavits, emergency protective orders, domestic violence orders, orders amending an existing protective order, or other orders issued pursuant to KRS 403.715 to 403.785, or the laws of another jurisdiction which are entitled to full faith and credit in Kentucky pursuant to the provisions of 18 U.S.C. sec. 2265, which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet. If the provisions of a protective order are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.

403.740 Emergency protective order.

- (1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:
 - (a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;

- (b) Restraining the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restraining the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Directing the adverse party to vacate the residence shared by the parties to the action;
 - (e) Utilizing the criteria set forth in KRS 403.270, 403.320, and KRS 403.822, grant temporary custody; or
 - (f) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof.
- (2) Except as provided in KRS 403.036, if the court issues an emergency protective order pursuant to subsection (1) of this section, the court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.
 - (3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.
 - (4) An emergency protective order issued in accordance with this section shall be effective for a period of time fixed in the order, but not to exceed fourteen (14) days. Upon the issuance of an emergency protective order, a date for a full hearing, as provided for in KRS 403.745, shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the fixed court date and time or as the court determines is necessary for the protection of the petitioner.
 - (5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the

petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

403.7527 Enforcement of foreign protective orders.

A court of this state shall enforce a foreign protective order authenticated pursuant to KRS 403.737, 403.7521, and 403.7524, including an order which grants relief to a person who is not eligible for a protective order in this state. A court of this state shall enforce all provisions of a foreign protective order including provisions which grant relief that is not available in this state. Any foreign protective order that has been properly authenticated and that comes within the purview of KRS 403.7524 shall be effective for the period of time fixed by the issuing court.

403.7529 Presumption of validity -- Enforcement by peace officers.

- (1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.
- (2) All peace officers shall treat a foreign protective order as a legal document, valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an emergency protective order or domestic violence order issued in Kentucky.
- (3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily

apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

- (4) In the event that the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.

403.7539 Civil and criminal proceedings for violations of foreign protective orders.

- (1) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2) If criminal proceedings for violation of a foreign protective order are undertaken, the following shall apply:
 - (a) A person is guilty of violation of a foreign protective order when the person intentionally violates the provisions of a foreign protective order properly authenticated, or filed and awaiting authentication, pursuant to KRS 403.7521 and 403.7524.
 - (b) Violation of a foreign protective order is a violation of KRS 403.763.
- (3) If civil proceedings for violation of a foreign protective order are undertaken, intentional violation of the foreign protective order by the person against whom it was issued shall constitute contempt of court.

403.755 Enforcement by law enforcement agency.

- (1) Upon the issuance of an order authorized by KRS 403.740 or 403.750, the court shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- (2) Orders issued under the provisions of KRS 403.740 or 403.750, whether an emergency protective order or an order following a hearing, shall be enforced in any county of the Commonwealth. Officers acting in good faith shall be immune from criminal and civil liability.

403.785 Duties of law enforcement agencies.

- (1) Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for Health and Family Services, Department for Community Based Services, within forty-eight (48) hours of learning of the incident or of the suspected incident.
- (2) When a law enforcement officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:
 - (a) Remaining at the location of the domestic violence and abuse so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;
 - (b) Assisting the victim of domestic violence and abuse in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and

- (c) Advising the victim immediately of the rights available to them, including the provisions of KRS 403.715 to 403.785.

Miscellaneous

Cases:

Garrity v. New Jersey, 385 U.S. 493 (1967). – Coerced admissions cannot be used in criminal proceedings.

City of Munfordville v. Sheldon, 977 S.W.2d 497 (1998). -KRS 15.520 case. At-will employees entitled to procedural protections if disciplined "for cause."

Heggen v. Lee, 284 F.3d 675 (6th Circuit, Ky. 2002). – Deputy sheriffs cannot be fired for supporting opponent of sheriff or other 1st Amendment political activities.

McClure v. Augustus, 85 S.W.3d 584 (Ky. 2002). – When a county elects to form a Deputy Sheriff Merit Board under KRS 70.260 et seq., the authority to remove a deputy is vested with the merit board, not the sheriff.

Montgomery v. Aubrey, 2004 WL 362380 (Ky. App.). – Charges stemming from internal complaints and disciplinary actions taken for acts of insubordination are NOT subject to KRS 15.520 review.

Vincent v. Doolin, 2005 WL 928649 (Ky. App.). – If a merit board is not adopted pursuant to KRS 70.260 et seq., deputies are considered at-will employees under KRS 70.030(1) and are not entitled to KRS 15.520 review.

1) **Robinette v. Pike County Sheriff's Department**, 2006 WL 2328621 (Ky. App.) – participation in Kentucky Law Enforcement Foundation Program funds does not entitle deputy sheriffs to KRS 15.520 protections, if the county has no deputy sheriff merit board.

2) **Humphrey v. Scott County Fiscal Court**, 211 Fed. Appx. 390 (Ky. 2006). For

federal law purposes, oral notice is sufficient to apprise employee the facts for his termination. Here, the employee did not appeal the termination as provided to the Scott County Deputy Sheriffs' Merit board, so he could not claim procedural defect in notice as required by KRS 70.270 and KRS 15.520.

Greenwell v. Parsley, 2007 WL 196896 (W.D. Ky.). – Deputy fired after filing to run against sheriff in November election does NOT have 1st Amendment protections outlined in *Heggen v. Lee*. Court stated that running against the sheriff went "far beyond the mere expression of a political viewpoint to the point of personal insubordination."

Cherry v. Augustus, ___ S.W.3d ___, 2006 WL 1867331 (Ky. App.). [NOTE: relying on opinion referred to by Ky. Supreme Court opinion in Case No. 1999 – SC – 000142 – DG.] – The Deputy Sheriff Merit Board can overturn the Sheriff's disciplinary decisions.

Opinion of Attorney General (courts MAY use in determining case law).

OAG 95-6 covered two questions of concern regarding adoption of Deputy Sheriff Merit Boards:

- a. All deputies, including top ranking and policy making deputy sheriffs are covered by protections of the merit board. (ALL deputies are covered and subject to Board review of disciplinary actions.)
- b. The creation of a Deputy Sheriff Merit Board does NOT abrogate the general rule that a deputy sheriff's appointment expires with the appointing sheriff's term, ouster, resignation, or death. (Merit Boards do NOT guarantee a deputy employment when a new sheriff takes office).

Sample "Garrity" Warnings

I wish to advise you that you are being questioned as part of an official investigation of the police/sheriff department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges, which could result in your dismissal from the police/sheriff department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

On (DATE) (TIME) at (PLACE), I was ordered by (NAME AND RANK) to give this statement/report at his/her order, as a condition of employment, in view of possible job forfeiture. I have no alternative but to abide by this order. It is my belief and understanding that this statement/report is to be used for the sole and exclusive purpose of an internal investigation, and that the Department can neither release any information contained in my statement/report to any other agency, nor can the information be used in any subsequent proceedings other than Department proceedings. I hereby reserve my constitutional right to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution, and any other rights provided me by State law. Should my statement/report be used for any purpose other than a Department internal proceeding, I assert the protections set forth in Garrity v. New Jersey.